GUADALUPE – COYOTE
RESOURCE CONSERVATION DISTRICT

Feb. 20, 2008

Comments: San Francisco Regional Water Quality Control Board Draft Municipal Regional Permit dated Dec. 14, 2007.

The subject draft document contains some very good, seemingly strong pollution prevention requirements in Sections A and B but the document appears to be very inconsistent. In many cases Section C seems inconsistent with and in some cases contradictory with the first two sections. Section C also contains many nebulous and vague requirements or "weasel words" that seemingly will allow requirements to be circumvented or disregarded. It also doesn't adequately address the methods and potential impacts of all types of non-stormwater discharges or pollution sources. In addition, it doesn't address the problems caused by current development, especially the ever increasing unnatural amounts of stormwater, which is being flash discharged into channels. It doesn't address the resulting excessive erosive forces and severe erosion and subsequent deposition caused by these discharges that are currently degrading our waterways and water corridors and their beneficial uses. As a result, the document and many of its requirements and prohibitions are inadequate, weak and often confusing. Many examples of specific problems are cited, all of which have been very well documented by field surveys and sequential photographs. This documentation has not been included with these comments to keep the file size manageable but it is available from the GCRCD on request. Detailed comments are provided below:

SECTION A - DISCHARGE PROHIBITIONS

Section A.1 - clearly states that "Permittees ***shall,*** within their respective jurisdictions, ***effectively prohibit*** the discharge of non-stormwater (materials other than stormwater) into the storm drain systems and ***watercourses.***"

Section A.2 - reiterates Section A.1's prohibitions and expands them to all surface waters and areas, such as riparian areas, creek banks and floodplains, where the pollution would eventually be transported to surface waters.

The above prohibitions are very positive anti pollution requirements in that they clearly cover all kinds of pollution, including trash, garbage, human and pet feces, as well as chemical, liquid and sediment pollution resulting from storm water and non-storm water flows. They not only cover pollution from drainage systems but also from watercourses and surface waters, as well as any place where the pollution would contact or where it would eventually be transported to surface waters, including riparian and flood plain areas.

SECTION B - RECEIVING WATER LIMITATIONS

Section B - clearly states that ***Section A discharges shall not cause the listed conditions of nuisance or adversely affect beneficial uses of water of the State***. Therefore, it clearly applies to non-stormwater discharges, such as trash, waste and junk.

There are two Section B.1's under the B heading and it is believed that the 2nd paragraph should be identified as B.2. The second B.1 paragraph also affirms that ***discharge shall not cause or contribute to a violation of any applicable water quality standard for receiving waters***, so it also applies to temperature pollution and erosive force flows.

SECTION C – PROVISIONS

C.1 Water Quality Standards Exceedances

Section C.1 - requires permittees to comply with sections B.1 and B.2 through the timely implementation of control measures and other actions to reduce pollution in the discharge of stormwater runoff. It subsequently states permittees shall implement control measures and Best Management Practices to reduce pollutants in stormwater discharges to the ***maximum extent practicable*****.** Who defines what the maximum extent practicable is? Why shouldn't the requirement simply be: to prevent and reduce pollutants in stormwater and non-stormwater discharges, as well as in watercourses, surface waters and areas where it can be transported in to these waters, as per Section A prohibitions? The maximum extent practicable clause provides a carte blanche escape route for permittees to avoid full compliance with the prohibitions in Sections A and B and thus sabotage MRP goals of significantly reducing pollution of our waterways, as well as improving water quality and beneficial uses. Thus Section C is certainly not consistent with Sections A and B and it could even be considered conflicting.

Who defines what Best Management Practices are and if they are working or not? One of the most cost effective ways to reduce pollution is to prevent it from happening in the first place. There are a plethora of federal, state, municipal and regulatory/resource agency laws and codes prohibiting the pollution of our waterways, riparian and wetland areas but they are largely not enforced. The MRP should require that responsible officials assure that the existing antipollution laws are strictly enforced and hold them accountable for doing so, per the provisions in existing laws, ref. Attachment I.

The section states that: if exceedance of water quality standards or water quality objectives persist in receiving waters, notwithstanding implementation of the C.1 Provisions, the Permittees shall assure compliance with Discharge Prohibitions A.1 and A.2 and Receiving Water Limitations B.1 and B.2 by complying with the procedures listed in (a. to d.). There appears to be nothing in these paragraphs that will increase assurance of compliance with A.1, A.2, B.1 and B.2. The a. to d. procedures seem to indicate that if the prohibitions and limitations of sections A & B are not met the requirements, control measures and reporting frequency may be modified. It is unclear if these modifications would impose stricter measures or relax the requirements. Weaker

requirements will only result in more pollution, contrary to the MRP Goals, and this is simply unacceptable.

C.2 Municipal Operations

Section C.2 - Does not address the construction of creek and river crossings, or the problems they cause and no other sections of the MRP seem to address these problems. Most older stream and river crossings (bridges and culverts) are inadequately sized to permit the channel to function in a natural stable manner or to pass large storm flows. Unfortunately, many of the new structures that have been built in the past few years or are currently being planned are also inadequately sized. As a result of these improperly sized structures, severe channel degradation, erosion and flooding are all but guaranteed. As a result, water quality and most beneficial uses are severely degraded. Bridges and culvert openings must be adequately sized to allow a properly sized bankfull channel to pass unrestricted under the crossing. There should be no obstructions in the active, or bankfull channel. Bridges and culverts must also be adequately sized to drain an adequately sized floodplain. Virtually all flooding problems in the San Jose area in at least the past 20 years have been the direct result of inadequately sized stream/river crossings, which are unable to pass large storm flows. Because most of these structures also have supports in the active channel they become clogged with debris, which further restricts their flow carrying capacity, contributing to severe erosion and flooding problems. For example, the flooding of downtown San Jose on March 10, 1995 was the direct result of a combination of the inability of the old Julian St. Bridge to pass the storm flows and a total debris dam blockage of the river at the sites of 4 railroad crossing trestles just downstream, further blocking flows. The old Julian St. Bridge only had the capacity to pass about a 7,000 cfs flow but the March 10th storm produced a flow of about 11,000 cfs at the bridge location per gage station records, which is estimated to have been only about a 50 year event.

The MRP also does not adequately address non-stormwater outfalls. There are a countless number of outfalls along our creeks and rivers that discharge water into our waterways. Some of these flows seem to be continuous and may actually be streams that have been buried in pipes. Many outfalls are gravity or continuous pumped flows and some are pulse discharged flows from pump stations. The method, location and path the water is routed into the receiving waterway can and often does cause significant water quality problems and degradation of beneficial uses. The MRP needs to address these negative impacts and require they be eliminated or fully mitigated. A number of examples from the San Jose area follow:

Guadalupe River - Trimble Ave. San Jose
Pump station outfall just downstream of Trimble Ave. on the east bank of the Guadalupe River. This is a pump station that has been significantly increased in size within the past 5 years. It is believed to serve as a stormwater pump station but is also functioning as a non-stormwater pump station. It provides flash discharge into the Guadalupe River overflow channel just downstream of Trimble Ave. at least several times a day. It is unclear where this discharged water comes from but the method of discharge has caused and continues to cause severe erosion problems in the overflow channel. This channel eroded more than 6 ft. deep in sections just downstream of the discharge in 2005 and

resulted in the discovery of Columbian Manmouth bones in the eroded overflow channel. The damaged channel was repaired more than once since 2005 but it continues to erode from the discharges. More fossilized bones were discovered in this head and laterally cutting overflow channel on Feb. 9th 2008.

Guadalupe River - San Jose Airport
Pump station on the west bank, just upstream of Hwy 101. This pump station is a non-stormwater station connected to a large water storage pool. It has been reported that the water in the pool is pumped there from the basement of the Airport's Terminal A. The water in the pool is exposed to and heated by the sun. Some of the water is reportedly used for irrigation by the airport but when the pool fills to a certain level it is flashed discharged into the river, usually at least twice a day. The discharge is so great it raises the water level in the river at least six inches at and downstream of the outfall providing fish attraction flows. At lower river flows it even elevates the river at least several inches a hundred yards upstream of the outfall and this is recorded as spikes in flow level and volume by the USGS Stream Gage Station # 11169025 at the San Jose Airport rental car lot access bridge. During low flow periods when the pumps turn off, the water level quickly falls, stranding fish. The discharge also quickly alters river water temperature especially during low flow periods, usually elevating it, negatively impacting fish and aquatic life.

Guadalupe River - Hwy 101/I-880 Outfall San Jose Airport
This outfall is on the east corridor of the river across from the Airport's Maintenance Buildings. Water from the outfall enters the river continuously. The outfall has been traced to the Hwy 101/I-880 interchange. Water is continuously being pumped from a well sump into a pipe, which eventually discharges into the river. Several problems have been documented with this outfall. At times the outfall discharge is very cloudy and contains a milky substance, which is deposited on the feeder channel bottom at the outfall exit. This pollutant does not seem to be coming from the pump location, so there must be some other connections to the discharge pipe between Hwy 101/I-880 and the outfall. The temperature of the discharge is a pretty constant 64 degrees F. This is cooler than the receiving water temperature in the summer, which is beneficial, but far warmer than the river water temperature in the winter and spring, normally more than 5 deg. F, which negatively impacts salmonid spawning, egg incubation, hatching and rearing.

Guadalupe River – Outfall Downstream of I-880
This outfall is just downstream of I-880 on the west bank and is constantly discharging water, which is often cloudy. It is unknown where this water is coming from but it is cooler than river water temperature in the summer but significantly warmer than the river temperature in the late fall, winter and early spring, negatively impacting it during critical salmonid spawning, egg hatching and rearing seasons.

Guadalupe River – Outfalls in Contracts 1-2, Downtown Flood Control Project
A number of outfalls now discharge into the dirt ditch secondary channel, which is poorly shaded and sloped so the water pools, stagnates and heats up causing negative temperature impacts to the main channel. A number of the outfalls still discharge into the main channel and they have the same temperature impacts as described above. In

addition, the outfall flows are often used by vagrants for bathing and washing, so they are constantly being polluted by soap and detergents.

Guadalupe River – Outfalls in Contract 3, Downtown Flood Control Project
There are numerous outfalls in the Downtown Guadalupe River Flood Control Project Area, some discharging continuous and some discharging pulse flows into the river corridor. These outfalls previously discharged water either directly into the channel or into rock lined or dirt feeder channels, which flowed into the river. These discharges were cooler than the receiving river water temperature in the summer months, which was beneficial but they were significantly warmer than river water temperature in the late fall, winter and early spring, often over 5 deg. F. The warmer water entering the channel from these discharges in the cooler months would raise the river water temperature, negatively impacting it at critical times for salmonid spawning, egg hatching and rearing.

Since the construction of the Downtown Guadalupe River Flood Control Project, many of these same outfalls now discharge water onto flat concreted surfaces, most heated by direct sun exposure. The flows spread out over the flat heated surfaces and significantly warm up before reaching the low flow channel. As a result, the discharged water is almost always substantially warmer then the river temperature by the time it reaches the low flow channel. It no longer provides beneficial cooling in the summer and most always has a negative warming impact. It is normally 5 to more than 10 deg. F warmer than the river water temperature and has been documented raising the main channel river water temperature by as much a 5 deg. F.

A number of the outfalls now discharge into bypass culverts either continuously or by pulse flow. These outfalls cause additional problems. Not only are the discharged flows spread out over the interior of the culvert, they are heated on the concreted sun heated surfaces as they exit the culverts. The flows also often contain a heavy load of fine sediment. Fine sediment builds up in the bypass culverts on the falling limb of the flood flow hydrograph and these fine sediments are now being flushed out into the river by the outfall discharges long after storm events. These fine sediments have been documented causing water turbidity, smothering salmon redds, clogging fish gills and killing salmon downstream.

C.3 New Development and Redevelopment

C.3.a - New Development/Redevelopment Performance Standards Implementation
This section contains some very good requirements but who defines what adequate and the maximum extent practicable is?

C.3.b - Regulated Projects
Where is maximum extend practicable defined? While a 10,000 ft² or more impervious surface creation is a controversially acceptable provision for invoking low impact development management techniques as a starting point, it should be reduced to 5,000 ft² for all development or redevelopment within 5 years. There should also be at least a goal to reduce it to 2,500 ft² in 10 years for all development and redevelopment, including single family homes. How much flash runoff is produced by 10,000 ft² and 5,000 ft² of impervious surface in various size/intensity rain events? C.3.b (4) indicates the

provisions apply to impervious surface trails that are greater than 10 ft. wide or are creek-side (within 50 ft. of the top of bank). Where is top of bank defined? The top of bank must be the top of the floodplain bank, not the active channel bank, as trails should not be built on a floodplain.

C.3.c - Low Impact Development - No comments

C.3.d - Numeric Sizing Criteria for Stormwater Treatment Systems - No comments

C.3.e - Alternative Compliance with Provisions C.3.b and d - No comments

C.3.f - Alternative Certification of Stormwater Treatment Systems - No comments

C.3.g - Hydromodification Management
One acre of impervious surface is a very large area that will provide significant flash runoff. Even a quarter acre of impervious surface will provide a significant amount of flash runoff. The cumulative runoff from multiple one acre or even a quarter acre plots will, in all likelihood, destabilize rivers/streams and cause excessive erosion and deposition problems. Flash runoff from even a quarter acre of impervious surface will certainly cause severe negative impacts on very small streams. In view of this, the requirement for hydromodification should be triggered by a quarter of an acre of impervious surface or less. At a very minimum, there should be a requirement to reduce the trigger for requiring hydromodification to a quarter of an acre in five years.

How will pre-project runoff estimates be made and how will estimates be validated? Why not require pre-project runoff to be measured? Subparagraph ii states: "Stormwater discharges from HM Projects shall not cause an increase in the erosion potential of the receiving stream over the pre-project (existing) condition. There is nothing that addresses the pre-project or existing condition of the channel. If the pre-project channel is on the brink of becoming unstable or is already unstable then any increase in discharge will destabilize it or increase its instability causing excessive erosion and making the requirement in subparagraph ii unattainable.

Most streams in the Santa Clara Basin's urban area are already unstable, primarily due to increased flash discharge from current impervious surfaces, channel encroachment and ill advised channel modifications. In order to have any chance of meeting the MRP Goals of water quality and beneficial use improvement, there needs to be an effort to reduce current stormwater discharge and associated erosive forces from all present development. An extreme example of these high erosive forces is clearly evidenced on the Guadalupe River in San Jose where they are so great that concrete mat bed armoring of the Downtown Flood Control Project, Contract 3C, has been torn up and rolled aside in a extremely hazardous tangled pile of concrete, steel cable, anchor rods and plates by the Jan 4, 2008 storm, which was only a low to moderate size, less than a 5-year, event.

C.3.h Operation & Maintenance of Stormwater Treatment Systems – No comments

C.3.i Detached Single Family Home Projects - No comments

C.3.j Collection of Impervious Surface Data for Small Projects – No comments

C.4 Industrial and Commercial Site Controls

No comments

C.5 Illicit Discharge Detection and Elimination

C.5.a Legal Authority. While there is no problem addressing authority issues, most all municipalities, counties and state agencies already have the legal and citation authority to enforce the plethora of existing anti pollution and dumping laws, ref Attachment I. The problem is that these laws are largely being ignored and are not being enforced. The MRP should establish strong punitive measures to force responsible authorities to strictly enforce current anti pollution laws.

C.5.b Create and Maintain an Enforcement Response Plan. While the requirement to create an Enforcement Response Plan and progressive response and enforcement methods are good, the MRP should also require permittees to implement a comprehensive campaign to make it very clear to everyone that pollution of our waterways and riparian corridors will not be tolerated and that strict enforcement of anti pollution laws will be implemented. More effort must also be placed on prevention. More patrols are needed to prevent the establishment of encampments and effectively discourage and penalize those inclined to litter, deface or trash riparian areas and waterways.

C.5.c Spill, Dumping and Complaint Response Program. In addition to a phone complaint system there should also be a web based system. The systems should be integrated and enable citizens to not only log complaints, it should allow them to track their complaints and to find out how and when the complaints were handled and resolved. The system should be able to track the number and type of complaints by specific location or waterway over time and allow the public to view this information. All reports of active illegal dumping should be referred to a quick response team for immediate investigation and action. If reports of active dumping or a real time water quality problem are received it does little good to investigate the problem days or even hours after the fact, as the polluters are likely to be long gone and any liquid spill pollution event dissipated.

C.6 Construction Site Control

No comments

C.7 Public Information and Outreach

C.7.a Storm Drain Inlet Marking The requirement to mark drain inlets is beneficial but there is nothing in the MRP that requires the marking of outfalls to the waterways. There should be a requirement that all outfalls, both stormwater and non-stormwater, be clearly marked with a unique easy to read identification. This would enable anyone,

especially the public, to easily and accurately report a problem with a specific outfall and its location would be easy for any authority/agency to pin point. If all known outfalls had unique identification numbers it would also be much easier for anyone to identify/report unknown, perhaps illegal outfalls.

C.7.b Advertising Campaign An advertising campaign to increase public awareness of pollution problems and prevention measures is also a good requirement. Unfortunately no amount of public awareness will have a large impact on the most significant sources of pollution on major Santa Clara Basin waterways unless it is tied to some time of incentive or rewards program. Most pollution along the urban segments of Santa Clara Basin waterways is caused by illegal dumping and/or littering. Vagrant encampments as well as casual dumping by vagrants, transients and vandals are major sources. People responsible for this pollution largely do not care about the environment, our waterways, awareness campaigns or programs. Unless there is a strong program to prevent waterside encampments and a strong enforcement program to penalize polluters there will be little progress in pollution abatement on major Santa Clara Basin waterways.

C.8 Water Quality Monitoring

It is unclear why the objectives of the monitoring section are not clearly stated in the beginning of the section, as they were in the draft segment developed by the MRP Monitoring Work Group.

C.8.c Status Monitoring/Rotating Watersheds It is unclear how limited monitoring on a rotating watershed basis will answer the questions: Are water quality objectives being met in local receiving waters? Do local waters support or are they likely to support beneficial uses? The best way to determine if many of the listed beneficial uses are being supported is to actually observe and document the use. The monitoring requirements in Table 8.1 provide more of a measure of "a level of quality" for given beneficial use than determine if there is an actual use. For example: cold water fish can survive in warm water for a time, within limits, recreation can and does take place in polluted water, although it may not be healthy, degraded waterways can still support rare and endangered species to a degree.

C.8.c. ii - Location Why isn't Stevens Creek listed for Santa Clara County?

Table 8.1 Status Monitoring Elements
Why were the Geomorphic, Substrate Characterization and Stream Flow monitoring requirements that were included in the draft version of the document prepared by the Draft MRP Monitoring Workgroup removed from the table?

There is no requirement in the plan to identify and monitor trash dumping hot spots. This is a major problem and fatal flaw in the MRP. If the goals of the MRP are to have any chance of being realized in the Santa Clara Basin, the sources of most of the trash and waste being dumped into its major waterways and along their banks has to be identified, monitored and abated. If this is not required, the goals of the MRP are not likely to be realized.

C.8.e Monitoring Projects

Table 8.4 Pump Stations for Year 1 Investigation Why isn't the Operation Agency listed for many of the pump stations?

C.8.e. iv Geomorphic Project Apparently the requirement for Geomorphic Monitoring included in Table 8.1 in the version of the MRP developed by the Monitoring Work Group was removed from the table and placed in this section. Why? While there was a requirement to perform geomorphic assessments, 3 per year in Santa Clara County waterways, now there is no such requirement. This version of the MRP gives permittees the option of doing one of three listed projects and one of these options is not a geomorphic project. It only requires that an "inventory of locations for potential stormwater retention retrofit projects be made. Given the choice of performing more time consuming, detailed, geomorphic field measurements or an easier to accomplish stormwater retention location inventory, it is not difficult to guess which activity will be selected.

In addition, the Substrate Characterization and Stream Flow monitoring requirements removed from Table 8.1 of the MPR Monitoring Work Group's draft version have apparently been deleted altogether. Stream flow monitoring is absolutely essential if there is to be any hope of improving water quality and proper stream function of our waterways. It is well known and documented that development adds more water and sediment to stream channels in a flash mode. As a result, stormflow hydrograph peaks and durations are impacted, increasing erosion and flooding potential. But development also affects low flow conditions. It is essential to know baseline or present stream flow conditions to be able to predict and/or measure post development impacts, so preventive or mitigation measures can be taken. There needs to be a requirement to monitor water flow on all moderately sized and major waterways. A functional USGS gage station satisfies this requirement. Many streams have gage stations operated by local agencies but often they are not being properly maintained or calibrated, per USGS standards. Therefore, there should be a requirement in the MRP that these stations be routinely calibrated and their data made available to the public in a manner similar to the USGS stations. The small size and relatively low cost of modern computer controlled, battery powered flow monitors make field installation relatively easy and inexpensive today, so the MPR should require that a schedule be establish to provide flow gages on all moderate and major waterways within some specified time frame.

C.9 Pesticides Toxicity Control

No Comments

C.10 Trash Reduction

Section C.10.a addresses trash and litter control issues in the context of high impact storm drain catchments, enhanced trash management controls and full trash capture devices. Section C.10.b addresses trash management control and trash capture devices basically related to drainage catchments. The sections also talk about and require increased sweeping and parking restrictions.

There seems to be a very large focus on trash and litter control from storm drains, which unfortunately is a relatively minor contributor of trash in the middle reaches of the Santa Clara Basin's major waterways, only about 10 to 15 %. There is no focus on the major sources of pollution on these waterways. Santa Clara Valley Water District (SCVWD) field biologists/engineers, San Jose's Park Rangers and the Guadalupe Coyote Resource Conservation District (GCRCD) estimate that about 75 to 80% of the garbage and trash that is finding its way into the urban reaches of our major waterways is getting their by either direct dumping into the channels and along the waterway banks or is being wind blown into waterways or riparian area from adjacent trails, lots and roadways. The garbage, trash and junk are also the most polluting and hazardous materials, much of it actually considered hazardous waste. It is unconscionable and unacceptable to focus attention away from the major trash sources along these waterways and place most all attention and resources on a far less significant source of pollution of these waterways. It is very likely that storm drains contribute a much larger percentage of trash to smaller channelized and fenced off channels with little or no riparian habitat especially in the upper watershed areas. It is not intended to discount or downplay the importance of focusing most resources and efforts on storm drain trash problems where they are contributing most of the trash. However, where they are only contributing a small amount and far less toxic and hazardous pollution the focus must be placed on the most significant pollution sources.

The section states that the "two trash control actions consist of implementation of Enhanced Trash Management Controls and installation of Full Trash Capture Devices." How can the enhanced trash management controls of increased street sweeping effectiveness, parking restrictions, enhanced inlet inspection and cleaning, adequate litter receptacles and full trash capture devices abate the excessive amount of trash that is getting into the middle reaches of the main Santa Clara Basin waterways via littering and direct dumping when only about 10 to 15% of it is coming from storm drains? It is absurd and totally unacceptable to have to wait until 2012 for permittees to develop a plan for preventing trash impacts on beneficial uses that will not have to be fully implemented until 2023! This does not agree with the prohibitions and limitations stated and required in Sections A & B of this MRP. How will the prohibitions against the pollution of our waterways and riparian areas mandated in Section A and B of the MRP, as well as the attached laws and codes be assured and enforced with respect to trash now?

The GCRCD provided the RWQCB with a letter and a CD containing over 200 photos, most with GPS coordinates, documenting the trash problems on the Guadalupe River and middle sections of Coyote Creek on February 28, 2007 in response to the State Water Resources Control Board's Request for Data for the Bay Area's 2008 303(d) List of Impaired Water Bodies, reference Attachment II. Most of these photos showed the pollution caused by direct dumping and human waste deposited either into the waterways or onto their banks. The GCRCD also filed a Letter Complaint with the Santa Clara County DA's Office on April 16, 2007 regarding the Pollution of Santa Clara Basin Waterways and Riparian Corridors. The complaint not only contained the same photos provided to the RWQCB but about 100 additional photos, most taken between February and April of 2007. The Complaint Letter requested that the DA's Office require the responsible agencies/authorities enforce our anti pollution laws, ref. Attachment III.

However, as of this date it is not obvious that the DA's Office has taken any meaningful action on this request, as little, if any, improvement in trash conditions have been observed on these waterways. As of this date the GCRCD has well over a hundred additional photos taken along the above waterways documenting the continuing trash dumping problems and is investigating other actions it can take to force authorities to effectively remedy the despicable, hazardous and unacceptable conditions. On Saturday, Feb 9th 2008, the undersigned biked the Guadalupe River from Grant St. to Trimble Ave. photo documenting conditions and taking flow measurements. There was trash, garbage and junk in the river, on its banks and in the trees all along the river and there were vagrant encampments in most riparian areas, many in plain view of the trail. The river was a disgusting mess and this condition is totally unacceptable. Not one law enforcement officer or park ranger was seen during the five hours spent along the river.

C.11 Mercury Controls

No comments

C.12 PCB Controls

No comments

C.13 Copper Controls

No comments

C.14 Polybrominated Diphenyl Ethers (PBDE), Legacy Pesticides and Selenium

No comments

C.15 Exempt and Conditionally Exempt Discharges

Section C.15.a lists a number of non-stormwater discharges, as exempted discharges in subsection i. Subsection ii states that the non-stormwater discharges listed in C.15.a.i are exempted unless they are identified by the Permittees or the Executive Officer as sources of pollutants to receiving waters. What motivates the Permittees to volunteer such information? How will the Executive Officer identify non-stormwater discharges as sources of pollution and what criteria will be used? What are considered sources of pollution? The GCRCD has identified many outfalls along the Guadalupe River that are either thermally polluting the river, providing flash discharges causing channel erosion and fish attraction/stranding or some other form of pollution/sedimentation or a combination of these negative impacts, see section C.2 comments and examples. Are these pollution sources considered exempt? If so this is unacceptable? If not, what must be done to get the problems addressed and fixed? Years of complaints to local and resource agencies have not abated the problem or have resulted in any significant corrective actions to date.

ATTACHMENT I

CITY OF SAN JOSE CALIFORNIA MUNICIPAL CODES

Section 13.44.190 Water Pollution Prohibited

"No person shall throw, discharge or otherwise deposit or cause or permit to be placed into the waters of any fountain, pond, lake, stream, bay, pool or any body of water in or adjacent to any city park, or any tributary stream, storm sewer, sanitary sewer or drain flowing into such waters, any substance, matter, or thing, liquid, solid or gas, which materially impairs the usefulness of such water for persons or the habitability of such water for any animal, bird, fish or reptile, which drinks, swims in or otherwise uses said water."

Section 13.44.220 Damaging Park Property – Prohibited Acts Designated

"Unless authorized in writing by the director of the department of recreation, parks and community services to do so, no person shall:

A. Pick, saw, chop, carve, cut, remove, or damage any flowers, seeds, bark, branches, twigs, leaves or blossoms of any tree, plant, shrub, vine, bush or other vegetation in any park of the city;
B. Drive any nail, screw, bolt or staple into, or attach any wire, rope or other fastening device to any tree or plant in any park of the city;
C. Cut or remove any sand, wood, turf, grass, gravel, stone or timber in or from any park of the city, or make any excavation by any tool, equipment, blasting or by any other means in any park of the city."

Section 13.44.230 Littering Prohibited

"No person shall deposit, drop or scatter any garbage, trash or rubbish, including, but not by way of limitation any glass, paper, cans, ashes, leaves and cuttings, furniture, appliances or concrete in any city park except in a receptacle designed and places to receive the same; nor shall any person import into or deposit in any city park from any other place any such garbage, trash or rubbish."

STATE of CALIFORNIA PENAL CODES 370 - 374

Section 370 "Anything which is injurious to health, or is indecent, or offensive to the senses …….. or unlawfully obstructs the free passage or use, in the customary manner, of a navigable lake, or river, bay, stream, canal or basin, or any public park, ……. **is a public nuisance."**

Section 372 "Every person who maintains or commits a public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, **is guilty of a misdemeanor**."

Section 373a "Every person who maintains, permits, or allows a public nuisance to exist upon his or her property or premises, and every person occupying or leasing the property or premises of another who maintains, permits or allows a public nuisance to exist thereon, after reasonable notice in writing from a health officer or district attorney or city attorney or prosecuting attorney to remove, discontinue or abate the same has been served upon such person, **is guilty of a misdemeanor**, and shall be punished accordingly; and the existence of such nuisance for each and every day after the service of such notice shall be deemed a separate and distinct offense, and it is hereby made the duty of the district attorney, or the city attorney of any city the charter of which imposes the duty upon the city attorney to prosecute state misdemeanors, to prosecute all persons guilty of violating this section by continuous prosecutions until the nuisance is abated or removed."

Section 374 (a) "Littering means the willful or negligent throwing, dropping, placing, depositing or sweeping, or causing any such acts, of any waste matter on land or water in other than appropriate storage containers in areas designated for such purposes."
(b) "Waste matter means discarded, used or leftover substance including, but not limited to a lighted or nonlighted cigarette, cigar, match, or any flaming or glowing material, or any garbage, trash, refuse, paper, container, packaging or construction material, carcass of a dead animal, any nauseous or offensive matter of any kind, or any object likely to injure any person or create a traffic hazard."

Section 374.3 (a) "It is unlawful to dump or cause to be dumped any waste matter in or upon any public or private highway or road, including any portion of the right-of-way thereof, or in or upon any private property …… or in or upon any public park or other public property …… ." (c) "Any person violating this section is guilty of an infraction. Each day that the waste placed, deposited, or dumped in violation of subdivision (a) or (b) of this section remains a separate violation."

Section 374.4 (a) "It is unlawful to litter or cause to be littered in or upon any public or private property. Any person, firm or corporation violating this section is guilty of an infraction." Paragraphs (d) and (e) indicate punishments.

Section 374.7 (a) "Every person who litters or causes to be littered, or dumps or causes to be dumped, any waste matter into any bay, lagoon, channel, river, creek, slough, canal, lake or reservoir or other stream or body of water, or upon a bank, beach or shore within 150 feet of the high water mark of any stream or body or water is **guilty of a misdemeanor**." Paragraphs (b) and (c) indicate punishments.

Section 374.8 (b) "Any person who knowingly causes any hazardous substance to be deposited into or upon any road, street, highway, alley, or railroad right-of-way, or upon the land of another, without the permission of the owner, or into the waters of this state is punishable by imprisonment in the county jail for not more than one year or by imprisonment in the state prison for a term of 16 months, two years, or three years, or by a fine of not less than fifty dollars nor more than ten thousand dollars, or both the fine and imprisonment …… ."

It should be noted that in addition to fines and incarceration, punishment for littering or depositing waste in waterways or public areas can include that the offender spend time cleaning up the litter or waste. This punishment may be a more appropriate penalty/deterrent than a fine, if routinely applied, especially in the cases of indigent offenders or where small fines would not be an effective deterrent.

CALIFORNIA DEPARTMENT OF FISH & GAME CODES

Section 5652 "It is unlawful to deposit, permit to pass into, or place where it can pass into the waters of the state, or to abandon, dispose of, or throw away, any cans, bottles, garbage, motor vehicle or parts thereof, rubbish, or the viscera or carcass of any dead mammal, or the carcass of any dead bird." **"This section shall be enforced by all law enforcement officers of this state."**

STATE OF CALIFORNIA

HEALTH AND SAFETY CODE
SECTION 25180-25184

25180. (a) (1) Except as provided in paragraph (2), the standards in this chapter and the regulations adopted by the department to implement this chapter shall be enforced by the department, and by any local health officer or any local public officer designated by the director.

(2) The standards of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, and the regulations adopted to implement the standards of this chapter listed in paragraph (1) of subdivision (c) of Section 25404, shall be enforced by the department and one of the following:

(A) If there is no CUPA, the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) Within the jurisdiction of a CUPA, the unified program agencies, to the extent provided by this chapter and Sections 25404.1 and 25404.2. Within the jurisdiction of a CUPA, the unified program agencies shall be the only local agencies authorized to enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(b) (1) In addition to the persons specified in subdivision (a), any traffic officer, as defined by Section 625 of the Vehicle Code, and any peace officer specified in Section 830.1 of the Penal Code, may enforce Section 25160, subdivision (a) of Section 25163, and Sections 25250.8, 25250.18, 25250.19, and 25250.23. Traffic officers and peace officers are authorized representatives of the department for purposes of enforcing the provisions set forth in this subdivision.

(2) A peace officer specified in subdivision (a) of Section 830.37 of the Penal Code may, upon approval of the local district attorney, enforce the standards in this chapter and regulations adopted by the department to implement this chapter. A peace officer authorized to enforce those standards and regulations pursuant to this paragraph shall perform these duties in coordination with the appropriate local officer or agency authorized to enforce this chapter pursuant to subdivision (a), and shall complete a training program which is equivalent to that required by the department for local officers and agencies authorized to enforce this chapter pursuant to subdivision (a).

(c) Notwithstanding any limitations in subdivision (b), a member of the California Highway Patrol may enforce Sections 25185, 25189, 25189.2, 25189.5, 25191, and 25195, and Article 6 (commencing with Section 25160) and Article 6.5 (commencing with Section 25167.1), as those provisions relate to the transportation of hazardous waste.

(d) In enforcing this chapter, including, but not limited to, the issuance of orders imposing administrative penalties, the referral of violations to prosecutors for civil or criminal prosecution, the settlement of cases, and the adoption of enforcement policies and

standards related to those matters, the department and the local officers and agencies authorized to enforce this chapter pursuant to subdivision (a) shall exercise their enforcement authority in such a manner that generators, transporters, and operators of storage, treatment, transfer, and disposal facilities are treated equally and consistently with regard to the same types of violations.

25180.5. (a) The department, the State Water Resources Control Board, and the California regional water quality control boards shall notify the local health officer and director of environmental health of a county, city, or district, and the CUPA for the jurisdiction as specified in subdivision (b), within 15 days after any of the following occur:

(1) The department's or board's employees are informed or discover that a disposal of hazardous waste has occurred within that county, city, or district and that the disposal violates a state or local law, ordinance, regulation, rule, license, or permit or that the disposal is potentially hazardous to the public health or the environment.

(2) The department or board proposes to issue an abatement order or a cease and desist order, to file a civil or criminal action, or to settle a civil or criminal action, concerning a disposal of hazardous waste within that county, city, or district.

(b) The notice given by the department or board pursuant to subdivision (a) shall include all test results and any relevant information which the department or board has obtained and which do not contain trade secrets, as defined by Section 25173, as determined by the department or board. If the department or board determines that the test results or information cannot be disseminated because of current or potential litigation, the department or board shall inform the local health officer, the director of environmental health, and the CUPA for the jurisdiction that the test results and information shall be used by the local health officer, the director of environmental health, and the unified program agencies, only in connection with their statutory responsibilities and shall not otherwise be released to the public.

(c) The department, the State Water Resources Control Board, and the California regional water quality control boards shall coordinate with the unified program agencies regarding violations of this chapter, or violations of regulations adopted pursuant to this chapter, at a unified program facility.

25180.7. (a) Within the meaning of this section, a "designated government employee" is any person defined as a "designated employee" by Government Code Section 82019, as amended.

(b) Any designated government employee who obtains information in the course of his or her official duties revealing the illegal discharge or threatened illegal discharge of a hazardous waste within the geographical area of his or her jurisdiction and who knows that the discharge or threatened discharge is likely to cause substantial injury to the public health or safety must, within 72 hours, disclose that information to the local Board of Supervisors and to the local health officer. No disclosure of information is required under this subdivision when otherwise prohibited by law, or when law enforcement personnel have determined that this disclosure would adversely affect an ongoing criminal investigation, or when the information is

already general public knowledge within the locality affected by the discharge or threatened discharge.

(c) Any designated government employee who knowingly and intentionally fails to disclose information required to be disclosed under subdivision (b) shall, upon conviction, be punished by imprisonment in a county jail for not more than one year or by imprisonment in the state prison. The court may also impose upon the person a fine of not less than five thousand dollars ($5000) or more than twenty-five thousand dollars ($25,000). The felony conviction for violation of this section shall require forfeiture of government employment within thirty days of conviction.

(d) Any local health officer who receives information pursuant to subdivision (b) shall take appropriate action to notify local news media and shall make that information available to the public without delay.

25181. (a) When the department determines that any person has engaged in, is engaged in, or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter, or any rule, regulation, permit, covenant, standard, requirement, or order issued, promulgated, or executed thereunder, and when requested by the department, the city attorney of the city in which those acts or practices occur, occurred, or will occur, the district attorney of the county in which those acts or practices occur, occurred, or will occur, or the Attorney General may apply to the superior court for an order enjoining those acts or practices, or for an order directing compliance, and upon a showing by the department that the person has engaged in or is about to engage in those acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

(b) When the unified program agency determines that any person has engaged in, is engaged in, or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter, or any rule, regulation, permit, covenant, standard, requirement, or order issued, promulgated, or executed thereunder, and when requested by the unified program agency, the city attorney of the city in which those acts or practices occur, occurred, or will occur, the district attorney of the county in which those acts or practices occur, occurred, or will occur, or the Attorney General, may apply to the superior court for an order enjoining those acts or practices, or for an order directing compliance, and upon a showing by the unified program agency that the person has engaged in or is about to engage in those acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted.

25182. Every civil action brought under this chapter at the request of the department or a unified program agency shall be brought by the city attorney, the county attorney, the district attorney, or the Attorney General in the name of the people of the State of California, and any such actions relating to the same processing or disposal of hazardous wastes may be joined or consolidated.

25183. Any civil action brought pursuant to this chapter shall be brought in the county in which the processing or disposal of hazardous waste is made or proposed to be made, the county in which

the principal office of the defendant is located, or the county in which the Attorney General has an office nearest to the county in which the principal office of the defendants, or any of them, is located in this state.

25184. In any civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it shall not be necessary to allege or prove at any stage of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued; or that the remedy at law is inadequate, and the temporary restraining order, preliminary injunction, or permanent injunction shall issue without such allegations and without such proof.

HEALTH AND SAFETY CODE SECTION 25242-25242.2

25242. (a) Any city, county, or state agency which, as owner, lessor, or lessee, knows or has probable cause to believe that a disposal of hazardous waste which is not authorized pursuant to this chapter has occurred on, under, or into the land which the city, county, or state agency owns or leases shall notify the department. Upon receiving that notice, the department shall determine if there has been a disposal of hazardous waste which is not authorized pursuant to this chapter.

(b) If the department determines that there has been a disposal of hazardous waste which is not authorized pursuant to this chapter, the department shall do all of the following:

(1) Conduct, or arrange for the conducting of, tests to determine the general chemical and mineral composition of the hazardous waste.

(2) Require the city, county, or state agency which submitted the notice pursuant to subdivision (a) to prepare a hazardous waste management plan specifying those removal or remedial actions, as defined in Sections 25322 and 25323, which are needed to be taken concerning the hazardous waste. The hazardous waste management plan shall provide for the protection of human health and the environment and minimize or eliminate the escape of hazardous waste constituents, leachate, contaminated rainfall, and waste decomposition products into ground and surface waters and into the atmosphere.

(3) Send notice of the department's findings made pursuant to paragraph (1) to the county in which the land is located, the city, if any, in which the land is located, the owner of the property, and residents living within 2,000 feet of the property line of the land on which the hazardous wastes were disposed. The department shall also post signs in the vicinity of the land which contain this information and are visible to the public. The department may also provide this notice to other persons, or post these signs in any other area, to protect the public health and safety or to provide the maximum opportunity for comment from the potentially affected public.

(4) Conduct public hearings on the proposed hazardous waste management plan during those times and at those places which are

convenient to the affected public. These hearings shall be conducted even if the hazardous waste management plan provides that no removal or remedial actions will be taken. The department shall publish notice of these hearings in newspapers of general circulation, as defined in Section 6000 of the Government Code, and shall use all other reasonable means to publicize these hearings.

(5) Take all actions required by Section 25358.7 concerning any proposed removal or remedial actions.

(6) Take any other actions authorized by this chapter or Chapter 6.8 (commencing with Section 25300) to carry out the legislative intent specified in Section 25242.1.

(c) The city, county, or state agency which is required to prepare a hazardous waste management plan pursuant to paragraph (2) of subdivision (b) shall submit the proposed hazardous waste management plan for approval to the department or a California Regional Water Quality Control Board, whichever the department determines is appropriate. A city or state agency shall submit the plan to the county in which the land is located, and a county or state agency shall submit the plan to the city, if any, in which the land is located, for comments and recommendations. The city, county, or state agency shall also consider whether to incorporate any changes in the plan which are recommended by the county, city, and the public.

25242.1. It is the intention of the Legislature, in enacting this article, to protect the public health and safety and the environment by requiring all of the following:

(a) **Prompt steps to remedy the unauthorized disposal of hazardous waste on public land be taken as soon as possible.**

(b) **Prompt notice be given to the affected public of such an unauthorized disposal of hazardous waste.**

(c) Affording the public an opportunity for input into the manner in which the hazardous waste will be cleaned up or rendered safe.

25242.2. Prior to, or simultaneously with, utilizing the provisions of this article, the department shall diligently pursue all feasible civil and criminal actions against the owner of the land or other party responsible for the disposal of the hazardous waste, who violates this chapter or the regulations adopted pursuant to this chapter.

The owner, lessee, or lessor of any land which is affected by hazardous waste which was disposed on, under, or into the land may recover the costs incurred in complying with this article, in a civil action, from any person who produced the waste or from any other person who was responsible for the disposal of the hazardous waste.

The lessee of any land, who was not responsible for the unauthorized disposal of the hazardous waste upon that land, may also recover the costs incurred in complying with this article from the owner of the land if the person who produced the waste or who was responsible for the disposal of hazardous waste cannot be located or cannot compensate the lessee for these costs.

HEALTH AND SAFETY CODE
SECTION 117475 & 117480

117475. For the purpose of this article the term "garbage" includes any or all of the following:
(a) Garbage.
(b) Swill.
(c) Refuse.
(d) Cans.
(e) Bottles.
(f) Paper.
(g) Vegetable matter.
(h) Carcass of any dead animal.
(i) Offal from any slaughter pen or butcher shop.
(j) Trash.
(k) Rubbish.
(l) Radioactive waste materials.
(m) Discarded, nonbiodegradable materials including plastics or damaged or broken marine equipment.

117480. **Every person who places, deposits, or dumps any garbage in or upon the navigable waters of this state**, or who places, deposits, or loads it upon any vessel, with intent that it shall be dumped or deposited in or upon the navigable waters of this state, or at any point in the ocean within twenty miles of any point on the coast line of the state, **is guilty of a misdemeanor**.

HEALTH AND SAFETY CODE
SECTION 117555 & 117560

117555. **A person who places, deposits, or dumps**, or who causes to be placed, deposited, or dumped, or who causes or allows to overflow, sewage, sludge, cesspool or septic tank effluent, accumulation of **human excreta, or solid waste**, in or upon a street, alley, public highway, or road in common use or **upon a public park or other public property** other than property designated or set aside for that purpose by the governing board or body having charge of the property, or upon private property without the owner's consent, **is guilty of a misdemeanor.**

117560. A state fish and game warden, police officer of a city, sheriff, deputy of a sheriff, person described in subdivision (i) of Section 830.7 of the Penal Code, and any other peace officer of the State of California, within his or her respective jurisdiction, **shall enforce** this article.

PORTER-COLOGNE WATER QUALITY CONTROL ACT

Section 13050(f)

"Beneficial uses of the waters of the state that may be protected against water quality degradation include, but are not necessarily limited to, domestic, municipal, agricultural, and industrial supply, power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves."

Water quality standards are adopted by the State Water Resources Control Board and the Regional Water Quality Control Boards to protect public health or welfare, enhance the quality of water, and serve the purposes of the Clean Water Act (as defined in Sections 101(a)(2), and 303(c) of the Act). Water quality standards consist of 1) designated beneficial uses; 2) the water quality objectives to protect those designated uses; 3) implementation of the Federal and State policies for antidegradation; and 4) general policies for application and implementation.

The beneficial uses, beneficial use definitions and the criteria and methods used to protect the uses are defined in the Basin Plans for each Region.

THE SAN FRANCISCO BAY REGION - BASIN PLAN

Chapter 2 - Defines the Beneficial Uses

Chapter 3 - Details Water Quality Objectives

"The overall goals of water quality regulation are to protect and maintain thriving aquatic ecosystems and the resources those systems provide to society and to accomplish these in an economically and socially sound manner. California's regulatory framework uses water quality objectives both to define appropriate levels of environmental quality and to control activities that can adversely affect aquatic systems."

3.1 Water Quality Objectives

"There are two types of objectives: narrative and numerical. Narrative objectives present general descriptions of water quality that must be attained through pollutant control measures and watershed management. They also serve as the basis for the development of detailed numerical objectives."

"Together, the narrative and numerical objectives define the level of water quality that **shall be** maintained within the region. In instance where water quality is better than that prescribed by the objectives, the state Antidegradation Policy applies (State Board Resolution 68-16: Statement of policy with Respect to Maintaining High Quality of Waters in California). This policy is aimed at protecting relatively uncontaminated aquatic systems where they exist and preventing further degradation. The state's Antidegradation Policy is consistent with the federal Antidegradation Policy, as interpreted by the Sate Water Resources Control Board in State Board Order No. 86-17."

3.3 Objectives for Surface Waters

The following objectives apply to all surface waters within the region, except the Pacific Ocean.

3.3.3 Biostimulatory Substances – Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses.

3.3.6 Floating Material – Waters shall not contain floating material, including solids, liquids, foams, and scum in concentrations that cause nuisance or adversely affect beneficial uses.

3.3.7 Oil and Grease – Waters shall not contain oils, greases, waxes, or other materials in concentrations that result in a visible film or coating on the surface of the water or on the

3.3.8 Population and Community Ecology – All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce significant alterations to population or community ecology or receiving water biota.

3.3.12 Sediment – The suspended sediment load and suspended sediment discharge rate of surface waters shall not be altered.

3.3.13 Settleable Material – Waters shall not contain substances in concentrations that result in the disposition of material that cause nuisance or adversely affect beneficial uses.

3.3.14 Suspended Material – Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.

3.3.15 Tastes and Orders - Waters shall not contain taste or odor producing substances in concentrations that impart undesirable tastes or odors to fish flesh or other edible products or aquatic origin, that cause nuisance, or that adversely affect beneficial uses.

4.2 Discharge Prohibitions Applicable Throughout the Region

To protect water quality of all aquatic systems throughout the region, the discharge prohibitions listed in Table 4-1 apply.

Table 4-1 Discharge Prohibitions - It Shall Be Prohibited to Discharge:

7. Rubbish, refuse, bark, sawdust, or other solid wastes into surface waters or at any place where they would contact or where they would be eventually transported to surface waters, including flood plain areas.
8. Floating oil or other floating materials from any activity in 1quantities sufficient to cause deleterious deposits, turbidity or discoloration in surf waters.
9. Silt, sand, clay or other earthen materials from any activity in quantities sufficient to cause deleterious bottom deposits, turbidity or discoloration in surface waters or to unreasonably affect or threaten to affect beneficial uses.
10. Raw sewage or any waste failing to meet waste discharge requirements to any waters of the Basin.

FEDERAL WATER POLLUTION CONTROL ACT
CLEAN WATER ACT

Section 101(a), 33 U.S.C. § 1251(a). - The objective of the act is to "restore and maintain the chemical, physical, and biological integrity of the nation's waters."

Section 101(a)(1) & (2), 33 U.S.C. § 125 (a)(1) & (2). - The goals of the act are:

- Elimination of the discharge of pollutants into surface waters
- Achievement of a level of water quality, which provides for the protection and propagation of fish, shellfish and wildlife and for recreation in and on the water.

Section 101(a)(3), 33 U.S.C. § 1259(a)(3). - establishes a national policy that the discharge of toxic pollutants in toxic amounts shall be prohibited.

Section 301(a), 33 U.S.C. § 1311(a). Section 301 establishes a broad prohibition against the discharge of any pollutant by any person except as in compliance with the Act's permit requirements, effluent limitations and other enumerated provisions."

Section 303(c)(2). 33 U.S.C. § 1313©(2); 40 C.F.R. § 131.10(a). Requires all states to classify the waters within the state according to intended use (e.g., public drinking water supplies, propagation of fish and wildlife, recreational purposes, and industrial, agricultural, and other uses).

Section 502(6), 33 U.S.C. § 1362(6). Defines pollutant to include dredged spoils; solid waste; incinerator residue; sewage; garbage; sewage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, municipal, and agricultural waste discharged into water.

40 C.F.R. §§ 131.10(g), 131.12. The state standards must attain the Act's goals of fishable, swimmable waters whenever possible and, under the EPA's anti-degradation policy, must maintain both the uses designated in the standards and the current uses unless the state can demonstrate that the designated use is unattainable or infeasible for reasons specified in EPA's regulations.

ATTACHMENT II

GUADALUPE – COYOTE
RESOURCE CONSERVATION DISTRICT

February 28, 2007

Ms. Naomi Feger
1515 Clay St. Suite 1400
Oakland, CA 94612

Subject: The State Water Resources Control Board's Request for Data for the Bay Area's 2008 303(d) list of impaired water bodies

Dear Ms. Feger:

Accompanying this letter is a CD containing 4 Microsoft Power Point files with photos of trash, debris, channel blockages, encampments, dumping and human waste pollution along the downtown and lower portions of Coyote Creek and the entire length of the Guadalupe River in San Jose. I have placed the photos of encampments and dumping/waste pollution along the banks in one folder and trash/debris/channel blockages in the other for each waterway in an attempt to separate actual current channel impacts from impacts that are likely to impact the channel, water quality and beneficial uses. Most all of the pollution on the banks and in the riparian areas eventually finds its way into the channel and is believed to be relatively easy to prevent and clean-up. Once in the channel it becomes far more hazardous and is far more difficult to clean-up. Unfortunately we didn't have the time to include photos from other area waterways but most urban reaches suffer from the same type of problems.

I have also included a number of Microsoft Word and Adobe Acrobat documents addressing negative impacts to the Guadalupe and Coyote systems caused by flood control projects, improper water flow management, and poor waterway maintenance practices. These documents and associated photos provide evidence that the Downtown Guadalupe River Flood Control Project is not functioning as promised, or per its permit and CEQA requirements. They also show clear violations of CEQA, CADF&G and public safety laws and also show significant discrepancies in various project designs and gage data that should be used for the designs.

Please feel free to contact me if you have any questions regarding the information submitted or other related matters (408) 288-5888, ljohmann@yahoo.com. Thank you.

Lawrence M. Johmann P.E.
President, GCRCD

ATTACHMENT III

GUADALUPE – COYOTE
RESOURCE CONSERVATION DISTRICT

April 16, 2007

Office of the District Attorney
70 West Hedding St.
San Jose, CA 95110

Subject: Pollution of Santa Clara Basin Waterways and Riparian Corridors

I am writing on behalf of the Guadalupe-Coyote Resource Conservation District (GCRCD) to notify you of a continuing and very serious problem, the blatant violation of numerous municipal, state and federal anti-pollution and dumping laws and the lack of enforcement of these laws by responsible authorities. The continued violation of these laws is resulting in the pollution and degradation of our riparian corridors and waterways. It is adversely impacting water quality, the state designated beneficial uses of our waterways, our natural resources and fish and wildlife. In addition, it is seriously jeopardizing public health and safety.

I have been monitoring many of Santa Cara County's waterways for over the past 15 years with a number of colleagues, over the past 12 years as a volunteer with the Guadalupe-Coyote Resource Conservation District, formerly the Evergreen Resource Conservation District. Over the years, numerous District Board members and volunteers have observed the results of large amounts of trash, debris, waste, and hazardous materials being thrown or placed on waterway banks or directly into our waterways. While some trash is finding its way into our waterways during storm events, via storm drains, and some is finding its way there incidentally, via the wind or rolling/sliding down steep creek banks and into the channel, much of it is being deliberately thrown or placed on waterway banks or directly into the channels by a number of identifiable sources.

One of the most prolific sources of trash, garbage, junk and even human waste cluttering and polluting waterway banks and channels are the vagrants and squatters that are attracted to riparian areas. Their encampments and associated waste is especially disgusting, offensive and environmentally degrading. It is conservatively estimated that they are responsible for 50 to 75 % of the trash/garbage, an even a higher percentage of the junk, such as shopping carts, mattresses, sleeping bags, clothing, etc. and most all of the raw human waste entering our waterways. A good deal of the waste they are contributing is classified as hazardous, such as propane tanks, camp stove fuel containers, butane lighters, electronic entertainment items, batteries, medical waste, drugs, glass, metal objects and human waste. Encampment sites along waterway banks and under bridges are fairly easy to locate and are often readily visible from pubic trails and bridges. Encampment sites are mostly located on property owned or controlled by local city

governments or their agencies, the County, the Santa Clara Valley Water District, Cal Trans or railroads. Attachments 1A & 1B contain a number of photos, most taken over the past six months of some of encampment sites, as well as the garbage and human waste associated with them along the downtown reaches of Coyote Creek and the Guadalupe River. Also attached is a CD containing over 280 photos in 4 Power Point files, taken over the past 10 years along the Guadalupe River and downtown reaches of Coyote Creek, of similar conditions showing the problems are consistent, Attachment 15.

Another significant source of trash, garbage and junk in the river is the intentional dumping by property owners and/or tenants. The location of these dump locations can often be relatively easily pinpointed and documented, at least along the larger waterways.

The Guadalupe-Coyote Resource Conservation District, other environmental advocacy groups and numerous private citizens have been complaining to authorities about the trash, waste, debris and pollution problems in our riparian areas and waterways for over the past 10 years but nothing meaningful has been done to eliminate, abate or significantly reduce the problem over the long term, (Attachments 2, 3, 4 & 5). Instead the problem has seemingly become worse. The trash, garbage, junk and waste currently in our riparian areas and clogging our waterway channels is absolutely despicable and totally repulsive. The number of illegal encampments along our waterways is the highest and most environmentally damaging ever observed, many removing large patches of riparian vegetation and tunneling into fragile waterway banks, which will certainly result in erosion and bank failure, thus posing a significant hazard to adjacent properties as well as properties downstream.

There is a multitude of municipal, state and federal laws, which prohibit polluting, littering or placing hazardous materials in our waters, waterways, riparian areas, or public open space. A few of the municipal codes being routinely violated are City of San Jose Municipal Codes: 13.44.190 - Water Pollution Prohibited; 13.44.220 – Damaging Park Property Prohibited; 13.44.230 Littering Prohibited, (Attachment 6). State Laws that are routinely being violated include California Penal Codes 370, 372, 374, 374.3, 374.4, 374.7 and 374.8, (Attachment 7), the California Department of Fish & Games Code, Section 5652, (Attachment 8), California Health & Safety Codes 25180-25184, 25242-25242.2, 117475, 117480, 117555 & 117560 (Attachment 9), the Porter-Cologne Water Quality Control Act, (Attachment 10) and the Regional Water Quality Control Board's San Francisco Bay Basin Plan, (Attachment 11). The polluting activities also violate the Federal Water Pollution Control Act/National Clean Water Act, (Attachment 12).

GCRCD volunteers and other volunteer groups have been regularly risking their health and well being performing creek clean-ups in our polluted waters over the past twelve years. They have pulled tons of trash, garbage, junk and hazardous waste out of our waterways every year in an attempt to improve conditions of our waterways and water quality, (Attachments 13, 14 and 15). Unfortunately the trash, garbage and junk are being thrown onto waterway banks and into our waterways almost as fast as it can be removed. Clean-up efforts largely only clean up visible surface trash and debris, they do not and can not remove the more polluting and environmentally damaging chemicals, pharmaceuticals, bacteria or most of the junk that sinks to the bottom of the waterway. It is recognized that the

San Jose Police and other agencies have also been involved in periodic large-scale clean-ups over the years, however, all of these efforts have proven to be ineffective. Tasking the police to be actively involved in performing clean-ups is also a waste of limited special resources. They should only be used to provide security for clean-up efforts.

The GCRCD understands that the City, in coordination with the SCVWD and County, have recently started to work harder trying to organize a collaborative effort to address the problem. However, given the fact that the GCRCD has been trying to get the problems effectively addressed for over ten years, the significant amount of time that has passed since it filed a formal petition regarding homeless encampments, Attachment 4, and the worsening condition of the creeks, the need for urgent action to stop the pollution is long overdue. Strong anti–pollution law enforcement measures need to be immediately taken. The GCRCD also believes that anti-pollution law enforcement measures will need to be part of any long-term solution to this problem. If our anti-pollution laws are not going to be enforced, they are meaningless and should be repealed, but this is contrary to what most citizens want. Allowing people to disregard our laws sends a clear message that using our waterways and riparian areas as dumps/sewers is an acceptable practice and this can only encourage additional dumping. Only when those irresponsible people who are polluting or may do so in the future get the message that such behavior will not be tolerated and will result in severe penalties, will the practice stop. It is always significantly less costly to prevent pollution and associated problems than to attempt to clean them up or mitigate the damages after they have been done.

Specifically, the GCRCD is requesting that the District Attorney's office immediately enforce or mandate that responsible authorities enforce Section 370 thru 374.8 of the California Penal Code in accordance with Section 373a of the Code and enforce Sections 25180-25184, 25242-25242.2, 117475, 117480, 117555 & 117560 of the California Health & Safety Codes. It is respectfully requested that in the case where illegal encampments and dump sites have been identified on local agency or private property, that the DA's office notify the responsible authorities in writing of the problem and request that it be immediately corrected in accordance with Penal Codes 372 & 373a. Most photos on the supplied CD contain GPS coordinates pinpointing the exact problem locations. If the public nuisance is not abated in a short/reasonable time, it is requested that the DA's office prosecute all persons violating sections 370 thru 374.8 of the Code, include all those allowing the nuisance to exist on the property they are responsible for until the illegal activities are abated in accordance with Penal Code 373a.

Please contact the GCRCD Office or the undersigned if you have any questions regarding any information in this letter or its attachments. Thank you.

Respectfully submitted,

Lawrence M. Johmann, P.E.
President

LIST OF ATTACHMENTS

Attachment 1A - Coyote Creek Trash/Waste, Encampment Photos

Attachment 1B - Guadalupe River Trash/Waste, Encampment Photos

Attachment 2 - GCRCD 1994 Complaint Letter to San Jose Police and Encampment Meetings Attendance

Attachment 3 - San Jose Mercury Newspaper Article on Homeless Problem and Salmon Poaching

Attachment 4 - GCRCD Homeless Encampment Removal Petition, Jan. 2005

Attachment 5A - GCRCD Letter to RWQCB re Trash/Photo submittal, Feb. 2007

Attachment 5B - GCRCD testimony at RWQCB Meeting re Trash, Mar. 14, 2007

Attachment 6 - City of San Jose anti-pollution Municipal Codes

Attachment 7 - California anti-pollution Penal Codes

Attachment 8 - California anti pollution Fish & Game Codes

Attachment 9 - California anti pollution Health & Safety Codes

Attachment 10 - California Porter-Cologne Water Quality Control Act excerpts

Attachment 11 - California RWQCB San Francisco Bay Basing Plan excerpts

Attachment 12 - Federal Clean Water Act excerpts

Attachment 13 - San Jose Mercury News Article, Guadalupe River Clean-up

Attachment 14 - Friends of Coyote Creek Clean–up Records 2004-2006

Attachment 15 - CD with over 280 photos of Trash, Junk, Waste, Encampments in 4 Power Point files (2 Guadalupe River, 2 Coyote Creek)